

ORIGINAL

FILED

January 19 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 09-0601

Phyllis Jamison
Pro Se Appellant
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Clinton, MT 59825
Phone & Fax (406) 825-2004

PHYLLIS JAMISON,

Plaintiff and Appellant,

FILED

JAN 19 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

v.

FRED VAN VALKENBURG,
MISSOULA COUNTY COMMISSION,
BILL CAREY, COMMISSIONER, JEAN
CURTISS, COMMISSIONER, JAMES
MCCUBBIN, DEPUTY COUNTY
ATTORNEY, DENA L. LUND, JACK S.
LUND, RICHARD B. WHEATLEY,
TAMBRY T. WHEATLEY,

Respondents and Appellees.

APPELLANT'S RESPONSE IN

OPPOSITION TO APPELLEES'

MOTION TO DISMISS APPEAL

ISSUES

ISSUE 1. Whether Appellees Jack Lund and Dena Lund properly served their January 5, 2010 "Motion to Dismiss Appeal" on all named parties.

ISSUE 2. Whether Appellant Phyllis Jamison properly took her appeal from the final judgment of the District Court.

ISSUE 3. Whether Appellant Phyllis Jamison timely filed her November 7, 2009 "Notice of Appeal".

ARGUMENTS WITH SUPPORTING AUTHORITY

ARGUMENT FOR ISSUE 1: Appellees and neighbors Lunds' 1-5-10 "Certificate of Service" at p.9 of their Motion to Dismiss Appeal, is attached to this Response as Exhibit 1 and shows the Lunds did not serve their 1-5-10 "Motion to Dismiss" on Appellees and neighbors Tambry T. Wheatley and Richard B. Wheatley.

Yet, the case caption on the Lund's "Motion to Dismiss Appeal" specifically lists both Tambry T. Wheatley and Richard B. Wheatley as named parties in this case, Exhibit 2, attached. **M.R.App.P. Rule 10(2) Service of all papers required:** Copies of all papers, including any transcript, filed by any party and not required by these rules to be served by the clerk of the supreme court shall, at or before the time of filing, be served by the party on all other parties to the appeal or review (emphasis added).

Further, the District Court's 7-6-09 Opinion and Order of Dismissal did order "for good cause shown" the case caption amendment Appellant Jamison requested that added neighbors Richard B. Wheatley and Tambry T. Wheatley to the case caption, Exhibit 3, attached.

Accordingly, the District Court's own 7-6-09 case caption included both of the Wheatleys, Exhibit 4, attached. Yet, the Lunds failed to serve their "Motion to Dismiss Appeal" on either of the Wheatleys, per their Certificate of Service, Exhibit 1, attached.

ARGUMENT FOR ISSUE 2: Appellant Phyllis Jamison did properly take her appeal from the September 9, 2009 final judgment of the District Court, Docket No. 31, Exhibit 5, attached.

Appellees Jack Lund and Dena Lund repeatedly err in arguing that Jamison should have taken her appeal from an earlier 8-20-09 judgment in the Lunds' favor, Docket No.29, Exhibit 5, attached. But, that judgment was not appealable because it did not settle all matters in the litigation. It was not until the 9-9-09 final judgment that all the matters of litigation were settled, including "\$45.00 costs of suit [for Missoula County], pursuant to their memorandum of costs filed in this matter," Exhibit 6, attached.

M.R.App.P. Rule 5 Orders and judgments that are not appealable: (a) In cases involving multiple parties or multiple claims for relief, an order or judgment which adjudicates fewer than all claims as to all parties, and which leaves matters in the litigation undetermined [is not appealable].

And, **M.R.App.P. Rule 4(1)** Judgments defined:

(a) **Final judgment.** A final judgment conclusively determines the rights of the parties and settles all claims in controversy in an action or proceeding, *including any necessary determination of the amount of costs and attorney fees awarded or sanction imposed* (emphasis added).

ARGUMENT FOR ISSUE 3: Appellant Phyllis Jamison did timely file her November 7, 2009 "Notice of Appeal".


M.R.App.P. 5(a)(i): "In all other cases in which the United States of America or the State of Montana, or any political subdivision thereof, or any officer or agency thereof is a party, the notice of appeal shall be filed within 60 days from the entry of the judgment or order from which appeal is taken. Appellant Jamison properly took her appeal from the final judgment filed 9-9-09 and entered 9-14-09. Thus, 60 days from the 9-14-09 entry of judgment is 11-13-09 and so

Jamison did timely file her 11-7-09 Notice of Appeal.
Indeed, Jamison filed her appeal 6 days early.

CONCLUSION

Appellees Jack Lund's and Dena Lund's 1-5-10 Motion
to Dismiss Appeal should be denied.

Respectfully submitted,

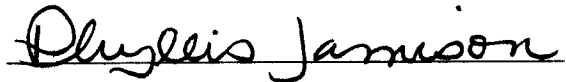


Phyllis Jamison
Pro Se Appellant
January 18, 2010

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4)(b); of the Montana Rules of
Appellate Procedure, I certify that this brief is printed
with a mono-spaced Courier text typeface of 12 points; is
double spaced; [I do not have Microsoft Word 2003 on my
computer-typewriter], is not more than 30 (14 for reply)
pages, excluding certificate of service and certificate of
compliance.

Dated this 18th day of January, 2010.



Phyllis Jamison, Pro Se Appellant

CERTIFICATE OF SERVICE

I, the undersigned pro se appellant, hereby certify
that on this 18th day of January, 2010 I have filed a true

and accurate copy of the foregoing Pro Se "Appellant's Response to Appellee's Motion to Dismiss" with the Clerk of the Montana Supreme Court and that I have served true and accurate copies of the foregoing motion upon each attorney of record and each party not represented by an attorney in the above referenced action, by depositing the same in the United States Mail, postage prepaid thereon, addressed as follows:

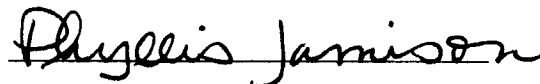
Paul Sharkey
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Alan F. McCormick
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Richard B. Wheatley
3004 Woodville Avenue
P.O. Box 116
Clinton, MT 59825

Tambry T. Wheatley
3004 Woodville Avenue
P.O. Box 116
Clinton, MT 59825

Dated this 18th day of January, 2010.



Phyllis Jamison
P.O. Box 343
Clinton, MT 59825
Pro Se Appellant

CERTIFICATE OF SERVICE

I, the undersigned, a representative of the law firm of Phillips Law Firm P.C., hereby certify that on this 5th day of January, 2010, I served a true and complete copy of the foregoing “*Motion to Dismiss Appeal*” by depositing the same in the United States Mail, postage prepaid thereon, addressed as follows:

Phyllis T. Jamison
P.O. Box 343
3024 Woodville Ave.
Clinton, MT 59825
Pro Se Plaintiff

Alan F. McCormick
GARLINGTON, LOHN & ROBINSON
P.O. Box 7909
Missoula, MT 59807
Counsel for Fred Van Valkenburg & Missoula County

A handwritten signature in cursive script, appearing to read "Alan F. McCormick", is written over a horizontal line.

EXHIBIT 1
JAMISON